Supreme Court, U. S.
FILED
APR 27 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1978
No. 78-1636

WILLIAM A. GOICHMAN,
Petitioner

v.

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

WILLIAM A. GOICHMAN,
In Pro Per

2040 Avenue of the Stars, 4th Fl.,
Century City, CA 90067

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 882-0401

TABLE OF CONTENTS

	PAGE
Opinions of the Courts Below	1
Jurisdiction	2
Questions Presented	3
Statement of the Case	4
Reasons for Allowing Certiorari	7
Argument:	
I. Where the state court took three years and nine and one half months after the record closed to render its decision in a lawyer disciplinary proceeding, petitioner's rights of due process were violated	9
II. Where there was no evidence as to some or all of the charges, petitioner-lawyer was deprived of due process of law	13
Conclusion	20
Appendix "A"—Order of the Supreme Court of Pennsylvania	1a
Appendix "B"—Opinion and Order of the Special Disciplinary Court of the Court of Common Pleas of Philadelphia County, Commonwealth of Pennsylvania	3a
Appendix "C"—Petition for Discipline	12a
Exhibit "A"—Excerpt, Phila. Daily News	20a

TABLE OF CITATIONS

CASES:

Barker v. Wingo, 407 U.S. 514 (1972) 7, 9

Harris v. U.S., 404 U.S. 1232 (1971) 13

In re Ruffalo, 390 U.S. 544 (1968) 8

Johnson v. Florida, 391 U.S. 596 (1968) 13

Klopfer v. State of North Carolina, 386 U.S. 213 (1967) 9

Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154 (1971) 10

Petition of Provoo, 17 F.R.D. 183 (D. Md. 1955), aff'd 350 U.S. 857 (1955) 10

Pollard v. U.S., 352 U.S. 354 (1957) 10

Rochin v. California, 342 U.S. 165 (1952) 10

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) 7, 13

Smoker v. Russell, 218 F. Supp. 899 (M.D. Pa. 1963) 10

Spevack v. Klein, 385 U.S. 511 (1967) 7, 10

Strunk v. U.S., 412 U.S. 434 (1973) 7, 9, 11

Thompson v. City of Louisville, 362 U.S. 199 (1960) 7, 13

United States v. Marion, 404 U.S. 307 (1971) 11

U.S. ex rel. Giovengo v. Maroney, 194 F. Supp. 154 (W.D. Pa. 1961) 10

Vachon v. New Hampshire, 414 U.S. 478 (1974) . 13

OTHER AUTHORITIES:

United States Constitution:

Sixth Amendment 9, 10, 11, 12

Fourteenth Amendment 9, 10

28 U.S.C. Section 1257 (3) 2

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No. ——

WILLIAM A. GOICHMAN,

Petitioner

v.

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, William A. Goichman, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania in the above cause.

OPINIONS OF THE COURTS BELOW

The order, without opinion, of the Supreme Court of Pennsylvania dated February 28, 1979, is attached hereto as Appendix A. The opinion and order of the Special

Disciplinary Court of the Court of Common Pleas of Philadelphia County, Commonwealth of Pennsylvania, dated June 26, 1978, sustaining the petition for discipline and ordering Petitioner to undergo a two year suspension from the practice of law, is attached hereto as Appendix B.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on February 28, 1979, meting out a two year suspension to Petitioner from the practice of law, commencing February 9, 1978.

The United States Supreme Court has jurisdiction to review judgments of the state courts in violation of the United States Constitution under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

1. Were Petitioner's rights to due process under the Fourteenth Amendment to the United States Constitution violated where the Pennsylvania Common Pleas Court delayed 3 years 9½ months after the close of the record before issuing its order of a two year suspension commencing February 9, 1978?

2. Were Petitioner's rights to due process under the Fourteenth Amendment to the United States Constitution violated where the Pennsylvania Common Pleas Court sustained each of seven counts of unprofessional conduct, but the evidence to support some or all of said counts was lacking?

STATEMENT OF THE CASE

Petitioner was licensed as a member of the Bar of the Pennsylvania Supreme Court on April 17, 1956. He practiced law in the Commonwealth of Pennsylvania following his admission to practice.

On February 9, 1973, upon the Petition of William P. Stewart, Assistant Special Counsel for the Special Judicial Investigation, a three-judge Disciplinary Court, composed of three Common Pleas Court Judges of Philadelphia County, Judges Klein, Lagakos and Stern, was convened to hear the charges preferred. An answer was duly filed by Attorney William A. Goichman in response to said charges.

The matter came up for hearing on September 23, 24 and 25, 1974. The Assistant Special Counsel presented his case on the said three days and rested. Petitioner presented no evidence. The Court took the case under advisement.

In the meantime, in June 1975, Petitioner was convicted of income tax evasion and he was suspended from the practice of law in Pennsylvania from February 9, 1976 to February 9, 1978. Following the expiration of that suspension, Mr. Goichman applied for reinstatement to the Bar of Pennsylvania and, at his hearing for reinstatement on June 26, 1978, the Special Disciplinary Court on that self-same day coincidentally issued its decision in the within matter, sustaining the petition for discipline and imposing a two-year suspension, commencing from the date of its order, namely June 26, 1978.

An appeal was taken to the Pennsylvania Supreme Court, following the procedure provided for in such cases. Petitioner, through counsel, raised the constitutional issues of due process due to delay and lack of evidence.

Counsel for Petitioner filed an "Application for Relief" with the Pennsylvania Supreme Court in the form of a "Motion to Void Opinion and Order Suspending Petitioner from the Private Practice of Law for Two (2) Years for lack of Timely Disposition." A copy of said petition is attached hereto as Appendix C and made part hereof.

In that Petition, it was argued, *inter alia* (page 3):

> *"The Intolerable Delay in Reaching This Determination Demands the Order be Stricken.* The keystone of judicial change over the past decade has been in the area of demanding promptness and efficiency in the resolution of matters brought before tribunals. This Court has recognized the evils of untoward delay by handing down one of the strictest speedy trial rules in the United States of America. Appellate Courts across the nation recognize the right of an individual charged with an offense to a speedy disposition of the charges against him. . . ."

Following the said petition, Mr. Fitzpatrick, Counsel for Petitioner, filed a series of letters with the Pennsylvania Supreme Court amplifying his client's position. A reply was made by letter by the Disciplinary Board of the Pennsylvania Supreme Court of the Commonwealth of Pennsylvania. In Mr. Fitzpatrick's letter dated January 15, 1979 (page 3 of same), Mr. Fitzpatrick stated midway down the letter:

"The record indicates quite clearly a serious lack of any evidence. . . ."

On March 9, 1979, the Pennsylvania Supreme Court, without opinion, issued its order affirming and approving the findings of the Special Disciplinary Court and ordering a two year suspension commencing from February 9, 1978.

THE REASONS FOR ALLOWING CERTIORARI

The Supreme Court of Pennsylvania has decided a federal question of considerable substance in a manner which does not accord with applicable decisions of this Court.

The Supreme Court of Pennsylvania has held by its decision that a Disciplinary Court which took three (3) years, nine and one-half months after the hearings closed and the parties rested, and five (5) years, four months and seventeen (17) days after the petition for discipline was filed to render its decision, did not violate Petitioner's constitutional rights.

The Supreme Court of Pennsylvania by its decision also held that there was evidence to sustain each and every count of the seven counts contained in the Petition for Discipline.

The conclusions reached by the Pennsylvania Supreme Court are not in accord with the decisions of this Court in *Strunk v. U.S.*, 412 U.S. 434 (1973), and *Barker v. Wingo*, 407 U.S. 514 (1972), as made applicable to disciplinary proceedings, by such cases as *Spevack v. Klein*, 385 U.S. 511 (1967).

The conclusions reached by the Pennsylvania Supreme Court are not in accord with the decisions of this Court in *Thompson v. City of Louisville*, 362 U.S. 199 (1960), and *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957), requiring evidence to sustain a conviction.

Another, very important reason for allowing certiorari, is that petitioner is also a member of the Bar of this Court and the validity of the instant disciplinary proceeding affects his standing at the Bar of this Court.[1]

[1] A federal court need not, and should not, recognize a state disciplinary order where there was a denial of either procedural or substantive due process. *In re Ruffalo*, 390 U.S. 544 (1968).

ARGUMENT

I. Where the State Court Took Three Years and Nine and One Half Months After the Record Closed To Render Its Decision in a Lawyer Disciplinary Proceeding, Petitioner's Rights of Due Process Were Violated

The petition for discipline was filed February 9, 1973. Hearings were held September 23, 24, 25, 1974, and on the last day of same the special prosecuting attorney rested his case. Petitioner presented no evidence and the hearings were closed. The Court took the matter under advisement. On June 26, 1978, the special Disciplinary Common Pleas Court issued its decision, sustaining the charges and ordering a two (2) year suspension commencing June 26, 1978. On appeal to the Pennsylvania Supreme Court, the findings were approved and affirmed, but the date of commencement of the two year period was readjusted to February 9, 1978 to February 9, 1980.

There can be little doubt that if the instant matter were a criminal case, the lapse of three years, nine and one-half months after the close of hearings, and lapse of five years, four months from the date of the Petition for Discipline, would constitute a violation of the Fourteenth Amendment to the United States Constitution which incorporates the Sixth Amendment therein. *Barker v. Wingo* and *Strunk v. U.S.*, supra.

Klopfer v. State of North Carolina, 386 U.S. 213 (1967), made the Sixth Amendment applicable to the

states. Judgment and sentence are considered part of the trial: *Pollard v. U.S.*, 352 U.S. 354, 361 (1957); *U.S. ex rel. Giovengo v. Maroney*, 194 F. Supp. 154 (W.D. Pa. 1961); *Smoker v. Russell*, 218 F. Supp. 899 (M.D. Pa. 1963).

This Court has held:

> "When a State seeks to . . . disbar [or discipline] a lawyer, it must proceed according to the most exacting demands of due process of law." *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154 (1971).

What rights apply to a lawyer in a disbarment proceeding has not been clearly or fully defined, but rather has been left to be decided upon on an ad hoc basis.

This Court has held that the right against self-incrimination does apply. *Spevack v. Klein*, 385 U.S. 511 (1967).

This case presents the issue whether the dictates or demands of the Sixth Amendment are incorporated into the Fourteenth Amendment for purposes of Bar Disciplinary Proceedings. We submit it does.

But even if it does not, there is another principle at work which would afford therapeutic relief, that is the "shock the conscience" rule enunciated in such cases as *Rochin v. California*, 342 U.S. 165 (1952). See also *Petition of Provoo*, 17 F.R.D. 183 (D. Md. 1955), aff'd 350 U.S. 857 (1955). In the *Rochin* case a person's stomach was pumped for evidence. While the Court had not then held that unreasonable seizure of evidence can be barred from use in a state court proceeding, the Court did hold

in that case that when the Court's conscience is shocked, the Court will bar such evidence. Later decisions did make the exclusionary rule fully applicable to state proceedings.

Therefore, the delay here may be struck down on the ground that it "shocks the Court's conscience," obviating the necessity of applying the parameters of the Sixth Amendment.

Chief Justice Warren E. Burger at the ABA Mid-Year Meeting on February 11, 1979 in Atlanta stated:

> "We all share a common desire to deliver justice with dispatch. The concept of a speedy trial is almost an article of faith."

In *United States v. Marion*, 404 U.S. 307, 320 (1971), the Court stated that delay may "seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends."

In *Strunk v. United States*, 412 U.S. 434, 439, the Court observed: "The speedy trial guarantee recognizes that a prolonged delay may subject the accused to an emotional stress that can be presumed to result in the ordinary person from uncertainties in the prospect of facing public trial or of receiving a sentence longer than, or consecutive to, the one he is presently serving—uncertainties that a prompt trial removes. Smith v. Hooevy, 393 U.S. at p. 379, 89 S.Ct. at 577, 578; United States v. Ewell, 383 U.S. 116, 120 (1966)."

The Court, we respectfully submit, should find that the delay involved herein, unexplained and without any justification, did not "accord" with "most exacting demands of due process of law."

There is no case directly on point. Moreover, it should be pointed out that cases involving a delay by the client in filing a complaint with the State Bar, or cases where the issue was not brought up, are not in point. Furthermore, even in those cases where delay was discussed, the parameters of the Sixth Amendment were not brought to bear.

Prejudice is defined in the cases as consisting of a drain of financial resources, curtailment of associations, subjection to public obloquy, creation of anxiety, emotional stress and the loss of the right to have a prompt or concurrent sentence imposed.

Certainly, all these things and more were present as a result of the Disciplinary Court delaying its decision for almost four (4) years. Moreover, the delay from the filing of the petition to the hearing (February 1973 to September 1974) is not to be thought of as being condoned. However, that delay pales when considered with the gross delay following the close of the evidence.

It should also be pointed out that when the Petition for Discipline was filed in February, 1973, an article appeared in the newspapers in Philadelphia casting Petitioner in a very unfavorable light. A copy of that article appears at the end of the Appendix attached hereto. This publicity added public opprobrium to the emotional stress. Prejudice in every sense of the word, assuming that were needed, has been fully demonstrated.

II. Where There Was No Evidence as to Some or All of the Charges, Petitioner-Lawyer Was Deprived of Due Process of Law

This Court has held that a conviction without evidence offends due process. *Thompson v. City of Louisville*, 362 U.S. 199 (1960); *Vachon v. New Hampshire*, 414 U.S. 478 (1974); *Harris v. U.S.*, 404 U.S. 1232, 1233 (1971); *Johnson v. Florida*, 391 U.S. 596 (1968). Cf. *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).

The statements and conclusions of the Trial Court in its opinion are not based upon valid proofs in the record, but rather upon a reticulated web of hypotheses and conjectures.

Several instances will suffice. Charge III concerned client Gunther Halcsin. Mr. Halcsin, the only percipient witness on this charge, testified that he saw the doctor treating him for injuries sustained in an automobile accident, 3 or 4 times, whereas the doctor submitted a bill to Mr. Goichman for 20 visits. The prosecutor never called the doctor to testify. The client, by whom the prosecutor is bound, testified that he *never* discussed the number of visits with the doctor with Mr. Goichman. Yet, the Trial Court concluded that Mr. Goichman "knew of, and participated with the doctor, in making the inflated and fraudulent medical claim."

Mr. Halcsin was asked by the prosecutor (N.T. Sept. 25, p. 39):

> "Q. Before your bill was settled, did you ever sit down with Mr. Goichman and discuss your injuries and number of visits?

A. No, I didn't."

The prosecutor further asked: (N.T. 46).

"Q. Did you ever have any discussion with Mr. Goichman about your visits to the doctor before your case was settled?

A. No, I didn't.

Q. Did you discuss that subject at the time you received your money?

A. Not to my recollection. At the time of settlement he told me what the doctor bill was and that was it. . . ."

Judge Lagakos (the writer of the opinion for the Court), then asked:

"Q. You knew there was something wrong when he told you the amount of the bill. Did you tell Mr. Goichman you only went one or two times?

A. I told him that. He showed me the paper and he said this is what you got, this is the money. He didn't show me the bill.

Q. My question is, did you ever tell Mr. Goichman that you only went two or three times?

A. *I don't think I did, Your Honor.*"

It was also brought out that the witness had said under oath previously that he had been to the doctor seven or eight times, in a unilateral meeting with the prosecutor (N.T. 52-53). It was also brought out that Mr. Halcsin had told the insurance company doctor that he had visited the office of Dr. Moss from the date of the accident, March 21st, 1970, to August, 1970 once a week and occasionally twice a week, thereby giving a consistent picture of the medical bill (N.T. 72).

Nevertheless, regardless of how many times Mr. Halcsin did in fact go to Dr. Moss, the fact remains he never told this to Mr. Goichman and there was no evidence that Mr. Goichman ever knew differently.

The witness was asked again by Goichman's counsel:

"Q. You never told Mr. Goichman the true number of visits?

A. No, I didn't." (N.T. 51)

The prosecutor, the Trial Judge, and counsel for respondent all asked Mr. Halcsin the same question, whether he had ever discussed the number of visits he made to Dr. Moss with Mr. Goichman and each time the witness said no.

Incidentally, the doctor was not called by the prosecutor. No other evidence was presented to show that Mr. Goichman had information before he submitted Mr. Halcsin's medical bill that it was false. Yet the Trial Court makes the gravest findings against Mr. Goichman on this count!

There was no proof that Mr. Goichman had any other "cases" with the doctor. Apparently, the Court infers such highly ignominious conclusions from the fact that Mr. Goichman had referred the client to the doctor. This, of course, is absurd! It is respectfully submitted that this charge was blatantly unsupported.

In Charge II, the client, Edward Manigo, was recommended to, and brought to, Mr. Goichman's office by an "unidentified policeman." Based upon this, the Court found Mr. Goichman guilty of unprofessional solicitation.

There was no evidence that Mr. Goichman had in any way aided or abetted in urging or encouraging this "unidentified policeman" to recommend or bring him clients.

The Trial Court based its stigmatizing conclusion on the fact that Mr. Manigo saw Mr. Goichman in his office give the "policeman" a "piece of paper," which he did not identify or know what it was, notwithstanding the Trial Court's imagination that it resembled a check. Moreover, there was no evidence as to what this paper was, and if it were a "check" what it was for, what it contained, how it read. It could have been made out to the Police Fraternal Organization or the Policeman's ball or a myriad other things!

Mr. Manigo testified that a policeman investigating his accident recommended Mr. Goichman as his lawyer and several days after the day of the accident, took him to Mr. Goichman's office. Mr. Manigo said he went because he "might give me the right lawyer" (N.T. Sept. 24, p. 17).

Mr. Manigo testified that the officer brought him to Mr. Goichman's office in civilian clothes. Mr. Manigo further testified:

> "A. Him and Mr. Goichman stepped aside and they had some talk and I see Mr. Goichman give him a piece of paper or something and me and him walk on down.
>
> Q. Were you able to identify the paper?
>
> A. No., I didn't pay it that much attention, to tell you the truth." (N.T. 20-21)

Then Judge Lagakos (the writer of the Opinion for the Court) asked:

> "Q. Let me ask you, Mr. Manigo, you said you saw Mr. Goichman give to the officer exactly what, would you describe that?
>
> A. Just a white piece of paper, I would say a check or anything, but I can't identify it as no check; I wouldn't say no check definitely."

Although the burden of proof is placed upon the prosecutor to present competent and sufficient evidence which is clear and convincing, the Trial Court found this evidence, which is no evidence at all, sufficient to support a finding of a "check", sufficient to support the inference that the "check" was made out to the officer, sufficient to support the inference that the money was given in return for bringing in the client, and sufficient to infer that all of this had been pre-arranged, and thus constitute unlawful solicitation.

To take away a lawyer's right to practice law, due process requires "evidence"!

Mr. Manigo was also allowed to testify to a conversation with the officer which took place after he left Mr. Goichman's office. Mr. Manigo testified that the officer had said to him, cryptically, "this is the way I make mine" (N.T. 21). There was no explanation of what this cryptic phrase meant. Did it mean that the officer derived his mental satisfaction this way, or that he was doing Mr. Goichman a good turn for doing good things for him, or, this was his good deed for today, or what?

Mr. Rose (Goichman's counsel) objected to this testimony as being pure hearsay; Mr. Stewart agreed that the statement could not be accepted for its truth but argued that it was relevant in helping to prove the act of solicita-

tion (N.T. 22). The statement itself had no meaning and Mr. Stewart's argument was casuistic.

Judge Klein (acting as the Presiding Judge) stated that the Court would receive it and rule upon it later (N.T. 22). The Court never did rule on it later.

It appeared on cross-examination that the client was dissatisfied with Mr. Goichman because the case had not been settled.

The Court asked Mr. Stewart whether he was able to identify the police officer involved. He said (N.T. 23): "We think we have identified that officer with the records. I have them right here, but as far as that officer being helpful to me, he is not, sir. That is what it was."

Mr. Stewart never produced any oral or written statements from such officer to Mr. Goichman or his counsel which would have, doubtless, been helpful to Mr. Goichman, notwithstanding the implications of the *Brady* rule.

The client also testified to a 100% hearsay statement, made out of Mr. Goichman's presence, to the effect that when he was being driven home by the policeman, the policeman said, "this is how I make mine." There was no explanation given by anybody as to what this was supposed to mean or refer to. The expression "how I get mine" denotes nothing. It could have meant, "this is how I get my personal satisfaction," or "this is my good deed for today," or a million other possibilities. The fact that the statement was pure hearsay and inadmissible evidence itself should have eliminated the garbled words to begin with.

It should also be pointed out that the Trial Court saw something sinister in the fact that Mr. Goichman, not

knowing who had referred the case to him, wrote to the client and asked the client to supply to him the name and address of the referrer or recommender, so he could report it on papers filed with the court. The Trial Court concluded that Mr. Goichman in doing this was trying to "cover up" something. This was a most absurd conclusion!

A lawyer is entitled to count policemen among his friends. There is nothing improper in having such a person refer him a case or bring him a client, so long as it is done by the policeman on his volition without express encouragement or understanding with the lawyer.

What we then have here is that the Trial Court first "imagined" that the piece of paper was a check; the Trial Court next imagined that the "check" was a written order for the payment of money to this "unidentified policeman." The Trial Court next imagined that the "check" was given as a *quid pro quo* for bringing in Mr. Manigo, and, hence, the Trial Court concluded there was a pre-arrangement between the lawyer-petitioner and the "unidentified policeman" and, hence, unprofessional solicitation.

A lawyer has a right to be condemned by proper evidence. What we have here is a conviction without evidence, based upon a loose string of conjectures tied together with imaginative stitching.

This petition will not belabor the other five charges, each in the same amorphous category. Hopefully, enough has been shown to remove the presumption normally attendant upon conclusions of the Trial Court from the solid bedrock of evidence to the gossamer zephyrs of the air. The same oblique reasoning was applied to the other counts. If what Mr. Goichman did in the Halcsin and

Manigo cases amounts to "fraud" and "unprofessional conduct", then half the Bar would be guilty of the same accusations.

It may thus be apparent why the Trial Court waited for almost four years before deciding the matter and why it issued its decision on the very day that petitioner was applying for reinstatement, a weapon in reserve, as it were. This may also explain why the Pennsylvania Supreme Court did not detail the evidence.

It may be assumed that the two year suspension resulting in this case was based upon proof of all seven counts and that the elimination of one or more counts would reduce or eliminate the suspension imposed.

It is, therefore, respectfully submitted that some or all of the charges were totally unproven and the judgment of the Supreme Court of Pennsylvania should be reversed for this reason.

CONCLUSION

Certiorari should be granted in this case to correct the glaring injustice created by the decision of the Court below. The egregious delay from the filing of the petition (5½ years and 4 years from the close of hearings) must be regarded as "shocking the conscience" of the Court.

Secondly, the evidence upon which the Trial Court based its findings of fact and conclusions of law was no

more than a reticulated web of conjecture and speculation spun out of a disjointed and garbled collection of bits and pieces.

Wherefore, it is respectfully requested that this Petition for Certiorari be granted and that this matter be set down for plenary consideration or judgment reversed based upon the Petition and opposition papers filed in this matter.

Respectfully submitted,

WILLIAM A. GOICHMAN,

In Pro Per, Petitioner

APPENDIX "A"

IN THE SUPREME COURT OF PENNSYLVANIA
In and For the Eastern District
Transferred to No. 233, Disciplinary Docket No. 1, From Appeals Docket No. 275 January Term, 1978

RE: WILLIAM A. GOICHMAN
APPEAL OF: WILLIAM A. GOICHMAN

Appeal from the Order entered 6/26/78, Court of: Disciplinary Court of Common Pleas for the County of Philadelphia

No. D-26 February Term, 1973

June 27, 1978—Notice of Appeal Docketed.

November 2, 1978—Application for Relief.

February 28, 1979—ORDER.

The order and findings of the Special Investigating Panel are approved and affirmed. The order directing suspension from the practice of law is affirmed but it is directed that the suspension date be effective as of February 9, 1978. Mr. Goichman may file an application for reinstatement with this Court's Disciplinary Board after August 2, 1979.

By the Court.

Order of Supreme Court

Mr. Justice Roberts does not join the Order of the Court and would make the two-year period of suspension imposed effective from the date of this Order rather than, as the Court directs, from February 9, 1978—a date thirteen months ago.

True Copy From Record

In Testimony Whereof, I have hereunto set my hand and the seal of said Court, at Philadelphia, this Eighth day of March 1979.

(s) Catherine E. Lyden
Deputy Prothonotary. (Seal)

Opinion and Order of Court of Common Pleas

APPENDIX "B"

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

No. D-29 February Term, 1973

IN THE MATTER OF WILLIAM A. GOICHMAN

OPINION AND ORDER

Before Klein, J., Stern, J. and Lagakos, J.

Opinion—William A. Goichman, Lagakos, J.

This matter is before the Court for consideration of a Petition for Imposition of Discipline of Respondent, William A. Goichman, a member of the Philadelphia Bar. An Answer was filed and, in addition, Respondent filed several pretrial motions which have already been disposed. The pretrial applications included request for copies of statements and depositions which were given to Respondent.

The matter proceeded to a hearing before this Court at which testimony was taken. After a review of the evidence and a careful consideration of the entire record and the applicable law, we are convinced that the prayer of the Petition should be granted and the Respondent should be disciplined.

The Petition for Imposition of Discipline charges Respondent with seven counts of unethical conduct including solicitation of personal injury claims, prosecuting inflated and fraudulent medical claims in personal injury cases and submitting false information to the Common Pleas Court. The standard of proof for discipline proceedings was established by *Krehel Appeal*, 419 Pa. 86 (1965) which held that the proof must be by a preponderence of evidence, which must be clear and satisfactory. The following summary of the evidence convinces us that the charges have been sustained.

The Arnold Case: Charge I, Solicitation, Charge VI, Filing False Retainer Agreement.

Raymond Arnold testified that on January 29, 1969 his father fell on a City sidewalk under the control of the Redevelopment Authority. He died soon after the fall and one week later an unidentified man came to the Arnold house and spoke to the Arnold family about retaining Respondent Goichman to make a claim in connection with Mr. Arnold's accident. This man made a second visit to the Arnold home and had the Arnolds sign a contingent fee agreement for Respondent. The Arnolds did not know Respondent before the solicitor's visit and had done nothing to request his or any other lawyer's services. Raymond Arnold testified that on a subsequent visit to Respondent's office he saw the solicitor in the office. Raymond Arnold's testimony was substantially corroborated by the testimony of Susan Arnold, his mother.

Respondent filed a copy of the retainer agreement with the Prothonotary on which it was stated that he was

referred to the Arnolds by "friends". This statement is false and as such is evidence of unethical solicitation.

The Manego Case: Charge II Solicitation

Edward Manego testified that he was injured while riding a SEPTA bus which was involved in an accident on September 26, 1970. He was taken from the accident scene with other injured passengers to the Women's Medical Hospital by the Philadelphia police. While waiting in the hospital emergency room with the other passengers, one of the policemen volunteered to Manego and the other passengers that Respondent Goichman, if retained, "could get the best money you can get". Manego testified that he had not known of Respondent and had no intention of making a claim before being solicited by the policeman.

After leaving the hospital, Manego did nothing to communicate with Respondent. The following day, however, he received a telephone call from the policeman who arranged to take Manego to Respondent's office the next day. Manego was driven to Respondent's office by the policeman in his private automobile and was introduced to Respondent. Manego agreed to retain Respondent on this occasion. He testified that while in Respondent's office he saw Respondent give the policeman a paper which by description could have been a check. The policeman then drove Manego to his home and during the trip told Manego "this is how I make mine", implying that he received something for referring the case to Respondent.

Respondent filed with the Prothontary on March 1, 1972 a copy of a contingent fee agreement with Manego dated February 11, 1972. On this filed copy were written

the words, "Does not Remember" in the section calling for the name and address of the person who referred the client to Respondent. We note that the retainer agreement was filed over a year after Respondent had been retained and that Respondent was not charged with filing a false retainer. At the hearing, however, counsel for Respondent introduced a copy of a letter from Respondent to Manego which corroborates Manego's testimony and convinces us that Respondent not only knew of the solicitation but deliberately attempted to conceal it by filing the above-mentioned copy. We refer to Respondent's exhibit No. 4 which is a letter dated February 8, 1972 on Respondent's stationery signed by him, and addressed to Manego. The letter requests Manego to sign and return a contingent fee agreement and to state who referred him to respondent. On the letter which was apparently returned to Respondent there was written the following:

> "I was brought into your office and introduced to you by a friend of yours, a police officer. Please return duplicate copy to me."

Manego testified that he had not written the words quoted above, did not recognize the handwriting to be his wife's and had no knowledge of his wife making the reply. Further checking with his wife it was proven by way of stipulation that Manego's wife had made the reply. We view this attempted impeachment of Manego's testimony as insignificant in view of the other evidence and especially the fact that her reply corroborates Manego's testimony that he was solicited by the policeman.

As noted, Respondent was not charged with filing false retainer agreement in the case and we make no finding in this regard. The evidence that a false retainer agreement was filed is relevant, however, to the solicitation charge and is considered by us as evidence of Respondent's knowledge of, and participation in the unethical solicitation of Manego's case.

Halcsin Case: Charge III, Fraudulent Medical Claim.

Gunther Halcsin testified that he was involved in an automobile accident on March 13, 1970, and retained respondent Goichman to make a claim against the responsible party. He was "shaken up a little bit", but did not go to a hospital or a doctor for treatment on his own. After retaining Respondent, Respondent referred Halcsin to Dr. Herbert Moss Halcsin saw 3 or 4 times. Halcsin told Respondent that he was not seriously injured and had not received any medical attention on his own. Halcsin visited Respondent's office on 2 occasions, once for the initial interview and again after the case was settled on March 20, 1972.

Halcsin testified that he did not receive a bill from Dr. Moss and had no knowledge of the amount of the bill until after the case was settled and he was called to Respondent's office to receive his share of the recovery. It is clear that Halcsin's medical expenses and treatment were not reviewed with him by Respondent before the case was settled. The record indicates that Respondent obtained the doctor's bill for $215 for 20 visits and his treatment report directly from the doctor and then submitted them to the responsible party. It is clear to us that Respondent knew of, and participated with the doctor in making the inflated and fraudulent medical claim.

The Roger and Doris Lindsay Case: Charge IV, Fraudulent Medical Claim, Charge V, Fraudulent Medical Claim.

Respondent was retained by Roger and Doris Lindsay to prosecute a personal injury case arising out of an automobile accident on December 12, 1969. Roger Lindsay and his mother, Doris, each testified that they had suffered only minor injuries in the accident and had not received any medical attention prior to meeting with Respondent to retain him. Each was referred to Dr. David Cramer by Respondent. They each testified that they saw Dr. Cramer two times.

In this case, Roger and Doris Lindsay testified in a pre-settlement deposition that they had each seen Dr. Cramer 17 times. They also signed Answers to Interrogatories containing the same false information. They admitted in the hearing before us that they had testified falsely in the deposition and signed the false Answers to Interrogatories at the direction of Respondent. Mrs. Lindsay also testified at Respondent's direction she testified falsely in the deposition that a fictitious person named "Dayton" had referred her to Dr. Cramer. In this case also the doctor's bills and reports were sent directly to Respondent by the doctor. From all the evidence presented we find that Respondent knew of and participated in the inflated and fraudulent medical claim against the responsible party.

The Barbara Penn Case: Charge VIII, Prosecuting Unauthorized Claim, Solicitation and Fraudulent Medical Claim.

The evidence in this case included the testimony of seven witnesses and written records submitted by Petitioner

and Respondent. Because of the extensive evidence, we cannot review it in detail. We are satisfied that the charges are sustained and find respondent guilty of shocking unethical conduct in the handling of this case.

Briefly, the evidence shows that Barbara Penn was a passenger in an automobile driven by Barbara Coston which was involved in an accident on June 13, 1969. Barbara Penn was not injured in the accident, did not seek any medical attention and did not retain or authorize Respondent to make a claim against the responsible party. Barbara Coston did retain Respondent who, without authority, included the claim of Barbara Penn in his dealings with the responsible insurance carrier.

Respondent falsely represented to the insurance carrier that Mrs. Penn had been treated by two physicians, both of whom testified that they had never treated Barbara Penn and had no communication whatever with Respondent concerning Barbara Penn. Each physician testified that he never authorized Respondent to use his name as a treating physician in the Penn case. The evidence is clear, however, that Respondent represented to the insurance carrier that each physician had treated Mrs. Penn and that the bill of one of the doctors was $60. Respondent fabricated this entire medical claim including representations concerning Mrs. Penn's injuries. Respondent then negotiated a settlement of Barbara Penn's case for $350 based on his fraudulent representations.

After concluding the settlement, respondent went to Mrs. Penn's house and prevailed upon her to sign the release. He then received the settlement check and again attempted to get Barbara Penn to go along with the fraudu-

lent scheme by endorsing it. She refused, and reported the scheme to the responsible party which resulted in a stop payment order being placed on the check. Respondent thereafter presented the check for payment with the forged endorsement of Barbara Penn. We infer from the evidence that Respondent forged the endorsement himself or was directly responsible for it.

SUMMARY

In summary, the evidence in these cases presents a melancholy record of unprofessional conduct in violation of the Code of Professional Responsibility. Without question, Respondent's conduct was utterly reprehensible and must be severely condemned. We find him guilty of each of the seven counts in the Petition for Imposition of Discipline. Under all the circumstances and after painstaking consideration, we have determined that Respondent shall be suspended from the practice of law for two (2) years.

Therefore, and in accordance with all of the foregoing, we enter the following

ORDER

AND NOW, this 26th day of June, 1978, it is ORDERED and DECREED that

(1) Respondent shall be suspended from the practice of law for two (2) years from the effective date of this Order.

(2) Respondent shall comply with the Rules of Disciplinary Enforcement of the Supreme Court of Pennsylvania pertaining to suspension.

Klein, J. concurs in the result.

(s) C. Klein
J.

(s) Stern
J.

(s) Lagakos
J.

Certified Copy
from the record in the

OFFICE OF THE PROTHONOTARY
284 City Hall
Philadelphia, Pa. 19107

I DO HEREBY CERTIFY that the attached photostat is a true and correct copy of the Final Decree in the within-entitled case on file in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the said Court this 26th day of JUNE A.D., 19 Seventy-Eight.

JOHN J. PETIT Jr.
Prothonotary

By (s) S. Merkest

(Seal)

APPENDIX "C"

IN THE SUPREME COURT OF PENNSYLVANIA

No. 275 January Term 1978

IN THE MATTER OF WILLIAM A. GOICHMAN

APPLICATION FOR RELIEF

Motion to Void Opinion and Order Suspending Petitioner from the Private Practice of Law for Two (2) Years for Lack of Timely Disposition.

F. EMMETT FITZPATRICK, ESQUIRE
3131 Centre Square West
Philadelphia, PA 19102

I.D. No. 03901
(215) 568-2700

Attorney for Petitioner

IN THE SUPREME COURT OF PENNSYLVANIA

No. 275 January Term 1978

IN THE MATTER OF WILLIAM A. GOICHMAN

APPLICATION FOR RELIEF

---

1. This Court has jurisdiction over this matter by reason of Section 202 of the Act of July 31, 1970 (P.L. 673, No. 223) known as the Appellate Court Jurisdiction Act of 1970 (17 Pa.C.S. 211.202 (6)).

2. This Application is filed under Rule 123 of the Rules of Appellate Procedure seeking relief not otherwise provided for in the Rules for reasons clearly evident upon the face of the record.

3. In September of 1974, a hearing was held by a Special Investigation Panel of the Court of Common Pleas upon a Petition for Imposition of Discipline against William A. Goichman on February 9, 1973.

4. Notice that a Petition was filed was made public and appeared in the local press on February 16, 1973. This article outlined the nature of the charges against Mr. Goichman.

5. Testimony was concluded in September of 1974 and no further action was taken regarding this matter. The Hearing Committee took the matter under review.

6. The applicant strongly disputes the findings of fact and conclusions of law reached by the Special Investigation Panel.

7. On June 26, 1978, some 44 months later, the Panel handed down an Order suspending Mr. Goichman from the practice of law for two years.

8. No explanation was ever given for the delay and none exists today.

WHEREFORE, Petitioner prays that the Opinion and Order of the Court of Common Pleas of the First Judicial District of Pennsylvania dated June 26, 1978 suspending him from the practice of law for two years effective from the date of that Order be stricken.

(s) F. Emmett Fitzpatrick
F. Emmett Fitzpatrick

IN THE SUPREME COURT OF PENNSYLVANIA

No. 275 January Term, 1978

IN THE MATTER OF WILLIAM A. GOICHMAN

MEMORANDUM OF LAW

William A. Goichman was graduated in the class of 1955 by the University of Pennsylvania Law School. He was admitted shortly thereafter to practice in the Courts

here in the Commonwealth of Pennsylvania. He served as President of the Philadelphia Trial Lawyers and was a member of the Bar Association's Board of Governors.

In October of 1971, a Special Judicial Investigation was conducted by the Court of Common Pleas of Philadelphia County into the practice of certain attorneys dealing primarily in negligence cases. On February 9, 1973, this investigation filed a petition for imposition of discipline against Mr. Goichman, charging him with seven specific counts of solicitation, filing of false retainer agreements, fraudulent medical claims and prosecuting an unauthorized claim. This petition itself was made public and subsequently appeared in *The Philadelphia Daily News* on Friday, February 16, 1973. Judge Jamieson, who was generally supervising this inquiry at that time, apparently believed that the filing of the petition was not covered by the confidentiality rules. At some later point in time, he changed his mind, but as far as Mr. Goichman was concerned, the public was notified in February of 1973 that he was charged with seven counts of unlawful conduct as a result of his negligence practice.

In September of 1974, a hearing was held before the Honorable Charles Klein, the Honorable Gregory Legakos and the Honorable James L. Stern regarding this petition and testimony was concluded in that same month. No further evidence was taken beyond the Fall of 1974.

In June of 1975, Mr. Goichman was convicted of income tax evasion for the years 1968 and 1969 by a jury in the Eastern District of Pennsylvania. He was fined $8,000 on each count. He was not ordered imprisoned, nor was he placed upon probation. As a result of that con-

viction, Mr. Goichman was ordered suspended on February 9, 1976 by the Pennsylvania Supreme Court for two years, retroactive to February 9, 1976. It's interesting to note that the Disciplinary Board recommended only that Mr. Goichman be suspended for nine months, but the Supreme Court increased this term to two years.

Mr. Goichman applied for reinstatement at the Bar of Pennsylvania and a hearing was held on June 26, 1978 before the Hearing Committee upon that request. At that time, for the very first time, the Opinion and Order of the Inquiry Committee which had concluded all testimony in September of 1974, was handed down. It ordered Mr. Goichman suspended from the practice of law for a two year period effective the 26th day of June, 1978.

Mr. Goichman is presently located in California and is applying for reinstatement to the Bar of that State. These proceedings vitally affect his future practice in that location.

THE INTOLERABLE DELAY IN REACHING THIS DETERMINATION DEMANDS THAT THE ORDER BE STRICKEN.

The keystone of judicial change over the past decade has been in the area of demanding promptness and efficiency in the resolution of matters brought before tribunals. This Court has recognized the evils of untoward delay by handing down one of the strictest speedy trial rules in the United States of America. Appellate Courts across the nation recognize the right of an individual charged with an offense to a speedy disposition of the charges against him. The new rules of disciplinary enforcement which admittedly were not in effect at this time require that matters be disposed of within a specified period of time.

Much of the unfortunate litigation surrounding the speedy trial requirement deals with justification for delay. It is noted in this instance that a mere reading of the Opinion and Order attached to this application shows no excuse for any delay, let alone a delay of 44 months between the close of testimony and the Order. There are no complex legal issues. There is no involved discussion of the law. There is a simple finding of credibility on behalf of the people who testified and the rather obvious conclusions that flowed immediately therefrom.

The injustice of delay is magnified when the nature of the punishment imposed by the Hearing Committee is analyzed. The Committee felt that two years' disbarment was sufficient punishment for the nature of the charges it found to exist against Mr. Goichman. Had that penalty been applied retroactively to the imposition of the disciplinary petition, it would have expired in February of 1975. Had it been applied immediately upon the conclusion of testimony in the Fall of 1974, it would have expired in the Fall of 1976. To allow not only the disposition to go completely unattended, but the penalty imposed to build upon that lack of attention magnifies tremendously the effect upon the Petitioner.

Clearly the practice of law requires that the public be able to rest its confidence in a system that will properly discipline lawyers. But a proper discipline must be a prompt discipline. Nothing about the delay in this instance supplies anything but a complete lack of confidence in the ability of the legal profession to properly police itself.

It is not as though Mr. Goichman is escaping punishment. He has been deprived of his right to practice law here in Pennsylvania since February 9, 1976. This punishment when viewed in relation to the total cumulative charges against Mr. Goichman is clearly sufficient. The attempt by the Disciplinary Committee to enlarge the scope of this punishment by building it upon its unexplained and unconscionable delay adds an intolerable injustice to the disciplinary system. Mr. Goichman respectfully requests this Court to void the Order of June 26, 1978 without further proceedings.

Respectfully submitted,

(s) F. Emmett Fitzpatrick
F. Emmett Fitztpatrick

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121.

Service by first class mail addressed as follows:

William P. Stewart, Esquire, Assistant Special Counsel, Special Judicial Investigation, 1526 Chestnut Street, Philadelphia, PA 19102.

and

John W. Herron, Esquire, Assistant Disciplinary Counsel, 807 Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107.

(s) F. Emmett Fitzpatrick
F. Emmett Fitzpatrick

Dated: November 1, 1978

EXHIBIT "A"

Philadelphia Daily News, Friday, February 16, 1973

2 ATTORNEYS CHARGED IN 'MISCONDUCT' PROBE

By Dave Racher

Two more lawyers, William A. Goichman and Gary C. Leeds, have been charged with "professional misconduct" in the special Common Pleas Court probe of "ambulance-chasing" attorneys.

Goichman, president of the Philadelphia Trial Lawyers last year and a former member of the Bar Association's Board of Governors, was charged with seven violations. He also was accused of submitting inflated medical claims to insurance companies.

Leeds was accused of unethically soliciting 17 victims of a bus crash, then submitting inflated medical bills to insurance companies.

One case against Goichman deals with a woman injured in an accident who, according to Michael Franck, who heads the probe, insisted she did not want to file a claim.

Goichman, according to the petition, filed a claim with the woman's insurance company, saying she had seen two doctors, and obtained a $300 settlement check for her.

When the woman refused to endorse the check, Goichman "endorsed the name . . . without authorization and deposited it in his own account, not knowing that payment had been stopped by the insurance carrier which had been notified by their insured of the fraudulent claim."